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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/602,597	06/22/2000	David Duhl	1568.002/200130.472	8915

27476 7590 05/31/2002

Chiron Corporation
Intellectual Property - R440
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EXAMINER

WEGERT, SANDRA L

ART UNIT PAPER NUMBER

1647

DATE MAILED: 05/31/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/602,597

Applicant(s)

DUHL ET AL.

Examiner

Sandra Wegert

Art Unit

1647

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 May 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 11-16.

Claim(s) withdrawn from consideration: _____

**ELIZABETH KEMMERER
PRIMARY EXAMINER**

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

Continuation of 3. Applicant's reply has overcome the following objections(s): The benefit of an earlier filing date under 35 U.S.C. 119(e) by listing the Provisional application (60/141,753) in the first paragraph of the Specification (37 CFR 1.78).

The declaration under 37 CFR 1.132 filed 5/2/02 is insufficient to overcome the rejection of claims 11-16 based upon 101/112-lack of utility/enablement as set forth in the last Office action.

Continuation of 5. does NOT place the application in condition for allowance because: Rejection of Claims 11-16 under 35 USC 101/112-1st paragraph for lack of utility/enablement is maintained for the reasons of record in the previous office action. Dr. Duhl (the Applicant), an associate director of Chiron Corp., has submitted an Affidavit attesting to the utility/enablement of the claimed invention by its homology to the protein of another species, without further evidence of specific function.